

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

:

Case No. 3:15-cr-170

Also Case No. 3:16-cv-438

Plaintiff,

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

DAVID PATE,

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATIONS**

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The Court has reviewed the Report and Recommendations of United States Magistrate Judge Michael R. Merz (ECF No. 35), to whom this case was referred pursuant to 28 U.S.C. § 636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby ADOPTS said Report and Recommendations.

Accordingly, it is hereby ORDERED that the Defendant's Motion to Vacate (ECF No. 26) is DISMISSED with prejudice. Defendant is DENIED any requested certificate of appealability and the Court hereby certifies to the United States Court of Appeals that an appeal would be objectively frivolous and therefore should not be permitted to proceed in forma pauperis.

February 21, 2017.

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\*s/Thomas M. Rose

Thomas M. Rose  
United States District Judge